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Federal Judicial Center
Annual Report

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1985 ANNUAL REPORT

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March 27, 1968 to September 23, 1969

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Senior Judge, United States District Court for the
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October 27, 1974 to July 17, 1977

THE FEDERAL JUDICIAL CENTER
1520 H STREET, N.W.
WASHINGTON, D.C. 20005

August 20, 1985

TO THE CHIEF JUSTICE AND MEMBERS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

Pursuant to the provisions of 28 U.S.C. § 623(a)(3), I respectfully submit the Annual Report of the Federal Judicial Center for fiscal 1985. The report summarizes the Center's activities since the last annual report and describes the work projected through the end of the current fiscal year.

This year, as in the past, we have benefited immeasurably from assistance given us by the judges, magistrates, and supporting personnel of the federal judicial system. Virtually no Center activity reported in the pages that follow has failed to benefit from the interest and generous support they have provided. We are, indeed, grateful.

We are particularly indebted to the members of the Center's Board, chaired by the Chief Justice. Many of our most important projects are the direct result of the Board's creativity and its desire to experiment. The members of the federal judiciary are the beneficiaries of their efforts.

This year the Center welcomed three new members to its Board. Periodic change in the composition of the Board was intended by the Congress when it created the Center. The governing statute provides that six of the eight Board members shall be elected by the Judicial Conference for nonrenewable four-year terms. Two positions, however, are ex officio and hence without terms—that of the Chief Justice as chairman and that of the director of the Administrative Office.

The intent of the statute with respect to the director of the Administrative Office is clear: It was to ensure close cooperation between that agency and the Center. We have been fortunate in the nature of that relationship over the years and are grateful to William E. Foley, former director of the Administrative Office, who did so much to foster effective cooperation. Director L. Ralph Mecham has already expressed his desire that there be the closest cooperation in the future. Our agencies share the same goal—that of serving the federal judicial system. To that end, we at the

Center pledge to continue our efforts and to do so with renewed dedication.

Sincerely,

A. Leo Levin

A. Leo Levin

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INTRODUCTION

Technology and the Reshaping of Continuing Education

Today's technology is having a radical impact on the Center's educational programs. Where time is of the essence, as it is in providing information about a new statute that takes effect immediately, no alternative can equal closed-circuit television, broadcast from coast to coast. Similarly, when a judge spends considerable time driving to and from the courthouse, it is hard to surpass the audiocassette as a means of reviewing familiar rules or keeping abreast of current developments. The new technology has made it possible to bring educational programs to members of the federal judicial system efficiently, effectively, and economically—to an extent that could hardly have been envisioned when the Congress created the Federal Judicial Center less than two decades ago.

This development should occasion no surprise; communication, worldwide, is virtually instantaneous and each evening brings into our homes a reenactment of the day's events from all over the globe. With attention to prompt scheduling and effective use of the medium, the potential impact of a single satellite telecast dwarfs that of even a series of traditional seminars.

Traditional seminars and workshops will, of course, continue to play a vital role in the Center's educational programs. In many situations, there simply is no substitute for the interaction of people. Moreover, broadcasts, videotapes, and films are neither always appropriate nor inevitably cost-effective. What bears emphasis, however, is that the mix of educational techniques utilized by the Center in the discharge of its obligation to provide continuing education for the personnel of the federal judicial system has changed substantially over the years—and this change has been for the good.

The past year brought persuasive confirmation of this point in connection with the Center's efforts to respond to the educational demands created by enactment of the Comprehensive Crime Control

Act of 1984 and the Criminal Fine Enforcement Act of 1984. The body of this report makes frequent reference to this legislation because it called for rapid and effective Center response on a number of levels. The legislation was comprehensive; it covered a large number of discrete subjects, from fines and special assessments to forfeitures. Some of its most important provisions, such as bail reform and repeal of the Youth Corrections Act, took effect immediately. In contrast, some of the acts' more dramatic provisions, such as the restructuring of sentencing law and the abolition of the Parole Commission, were not to take effect for some years. Moreover, the changes were relevant to the duties of many different people within the judicial system: probation officers, pretrial services officers, clerks of court, magistrates, and the judges of the U.S. district courts and the U.S. courts of appeals. Finally, enactment of this legislation in the form in which it passed was largely unanticipated; indeed, virtually until its final passage it was hazardous to predict whether the Congress would finally act on criminal law reform.

We need not detail here the full range of the Center's efforts to meet the needs thus created and to meet them as promptly as possible. It is, however, relevant to focus on the use of the new technology as a major component of that response.

The Center used a satellite telecast to present a four-hour educational program dealing with the new statutes, which reached 2,203 individuals located at receiving sites in thirty cities. Open telephone lines made it possible for the faculty to respond to questions from the audience, and the responses were broadcast so that all viewers could benefit.

In accordance with standard procedure, the telecast was videotaped, edited only slightly, and promptly made available to federal courts throughout the country. The best estimate is that these tapes already have been seen by more than six thousand people.

With legislation so complex, not only with respect to its substantive provisions but also with respect to the effective dates of its various provisions, more was required than an oral presentation, whether live or recorded. To make the program more meaningful, the Center prepared a sixty-three-page synopsis of the new statutes, which included a nine-page subject-matter index, progressing from manuscript to bound book in just three weeks. The demand for this publication necessitated multiple reprintings; today there

are 10,500 copies in print. The synopsis has proved a valuable adjunct both to the telecast and to the use of the videotapes and, in addition, is serving as an independent reference tool.

Several observations concerning the use of videotape are helpful in understanding the broader audiovisual program that the Center continues to develop. First, it simply was not financially practicable to offer personnel in every district the opportunity to see and hear the live telecast. Increasing the number of viewing sites would have involved an additional expenditure of great magnitude; the expense of travel to one of the thirty sites for every member of the federal judicial system who wished to attend would have been prohibitive and, even more to the point, would not have been cost-effective. Indeed, one of the original motives for the Center to develop alternatives to traditional seminars and workshops was the desire to respond to congressional requests that we reduce travel without detracting from the effectiveness of the Center's educational program. Those who could not attend the telecast were accorded the highest priority in receiving copies of the videotape.

Quite aside from financial considerations, videotape provides an element of flexibility, particularly in scheduling, that is sometimes of major importance. For example, the judges of one large metropolitan court recognized that they could not close their court for the four-hour period of the telecast. Instead, the judges opted to view the videotapes in four segments during a series of lunch hours. Again, viewed more broadly, such flexibility is one of the elements that has contributed to the wide use of the Center's media programs. It should also be noted that many who hear or see a program at the time it is first presented find it useful subsequently to review the material through the medium of audiocassettes or videocassettes.

One program, one series, can serve as an illustration; no single instance, however, can suffice to demonstrate the dimension of the Center's media program. For that purpose it is helpful to consider some of the statistics. Over a period of exactly one year, the Center filled 2,784 requests for the loan of material from its media library. Of these, 1,051 were for audiocassettes, 1,448 for videocassettes, and 285 for items in the film collection. A total of 843 different titles were circulated during the course of this year. It should be noted, however, that in many cases two titles represent substantially similar treatment of the same subject, sometimes by the same lecturer, albeit at different seminars. The Center is currently reviewing its entire media collection to reduce the number of titles while at the

same time ensuring that the material is both current and representative of the best that can be offered on each subject.

It is instructive to consider which groups use the Center's audiovisual materials. Federal judges—district, circuit, and bankruptcy—account for the largest number of requests: 22 percent of the total. If one adds magistrates, the resultant group accounts for virtually one-third of all requests. Probation officers are also heavy users, accounting for 20 percent of the total. District court and bankruptcy clerks together account for approximately 14 percent of the requests.

As the body of this annual report indicates, there is more to an effective media program than announcing the availability of tapes or films. The presence of a seasoned discussion leader to respond to questions stimulated by the videotapes and to add comments as appropriate, sometimes reflecting new developments and sometimes reflecting personal views, is an essential ingredient of a truly successful orientation program. As the discussion in a number of the sections in this report shows, this is true with respect to newly appointed district judges, bankruptcy judges, magistrates, and probation officers. In addition, the Center's network of local training coordinators, developed and expanded over a period of a decade, is an important ingredient in ensuring the effective use of the materials that are borrowed. We are committed to continued monitoring both of the evaluations of media materials, which are regularly returned by the users, and of the effectiveness of our local training programs.

Obviously, electronics alone cannot satisfy all of the educational needs of the federal judicial system. To say this is not to denigrate their utility; they can and do constitute an exceedingly valuable component of the Center's response in meeting those needs and fulfilling its mission. Ultimately, however, justice is administered by people, and there are situations in which there is great utility in ensuring that individuals have the opportunity to meet, to pose questions, and to exchange ideas, not only during structured programs but in the corridors and the dining rooms as well. The Center continues to strive to achieve an appropriate balance, harnessing the advantages of the new technology without sacrificing the good that inheres in the traditional.

I. TRIAL COURTS

Not too many years ago, people could still speak of "*the* federal district judge" even in states of considerable population. The number of federal judges was small; the structure of the courts in which they sat was relatively simple. There still are a number of districts with only one or two judgeships, reminiscent of those earlier days. At the opposite end of the spectrum, however, are the large and complex federal courts that serve metropolitan areas. In the Southern District of New York, for example, there are twenty-seven judgeships, fourteen senior judges presently sitting, seven bankruptcy judges, eight full-time magistrates, and one part-time magistrate. When one adds necessary supporting personnel, the total complement approaches four hundred. In the Central District of California there are fewer judgeships but more supporting personnel, and the total complement exceeds five hundred. The Center must serve them all. Clearly, the demands of the one- and two-judge courts differ radically from those courts that serve huge metropolitan populations. The material that follows details the Center's efforts to respond to the needs of the federal trial courts with respect to education, research, and automation.

A. Continuing Education and Training Programs

Seminars and workshops, in-court instruction, manuals and monographs, and a circulating collection of videotapes, films, and audiotapes treat problems of national scope in some instances and meet specific local court needs in others. Orientation programs are designed to help meet the immediate operational needs of new judges and, where feasible, supporting personnel, and to meet those needs at the time the individuals embark on their new duties. Continuing education, which takes many forms, informs participants of changes in the law imposed by statute or by appellate courts, of new techniques of court and case management, and of technological and administrative innovations. Trial court personnel also benefit from the Center's program of support for attendance at courses offered by other educational institutions, courses that supplement the programs the Center develops.

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The education of judicial officers has always been the Center's first priority, with the expectation that all judges will be offered the opportunity to attend at least one seminar or workshop each fiscal year. A similar expectation is not feasible, however, with respect to all supporting personnel, given their numbers and the limits on the Center's staff and resources. Of course, continuing education in some form, including audiovisual and printed materials, is regularly available to every member of the federal judicial system.

Orientation Programs for Newly Appointed District Judges. Newly appointed district judges are virtually unanimous in their desire for substantial orientation. They bring to their new position a wide variety of backgrounds, some having extensive experience in the criminal law, others, more commonly, having rich experience in certain phases of civil practice. Almost none, including those who have already served many years as judges in state court systems, have had experience in the broad range of duties that they encounter as trial judges in the federal system. Typically, the new appointee is conscientious, eager to perform at the highest level in meeting his or her new responsibilities. From the perspective of the system, educational programs for the newly appointed judge are clearly cost-effective. The dollars saved in avoiding retrial is only one benefit; the litigants are served well, and the public perception of the judicial system, an important factor in a democratic society, is also enhanced.

The Center in recent years has had a three-phase program for newly appointed district judges. First, there is an in-court orientation program; second, there is a regional seminar largely devoted to discussion of videotape presentations; and finally, there is the week-long session in Washington, probably the Center's best-known educational program.

A week-long orientation seminar for newly appointed district judges is scheduled whenever the number of eligible judges is large enough to constitute a class of approximately thirty. The seminar is normally held about once a year, but when a large number of new judgeships are created, as was the case in 1984, additional seminars are held to accommodate the total number appointed. The week-long orientation seminar, in which the Chief Justice participates, brings together judges from all parts of the country and is traditionally held at the Center's Dolley Madison House headquarters in Washington, D.C.

A January 1985 seminar was attended by twenty-two new district judges and one judge of the Court of International Trade. In conformance with the Center's policy of including others on a space-available basis, one judge from the Tax Court, two judges of the Judge Advocate General's Corps, and a judge from the Republic of the Philippines also attended the January seminar. An additional seminar, at which approximately forty newly appointed judges are expected, has been scheduled for October 1985.

The January seminar provided intensive treatment of subjects such as trial and pretrial management of civil and criminal cases, special problems of jury and nonjury trials, the federal rules of evidence, and judicial ethics. Because the constraints imposed by federal judicial service affect spouses as well, the ethics program is offered for both the judges and their husbands and wives. The seminar also offered a framework for analyzing such federal specialties as antitrust litigation, fraud and civil liability under the securities laws, and employment discrimination, as well as class actions and the law of search and seizure. The new judges received an overview of the October 1984 Comprehensive Crime Control and Criminal Fine Enforcement acts and an explanation of the bail amendments that constitute title I of the Crime Control Act. A special panel on the trial judge and the correctional system also touched on the new legislation, but its primary purpose was to highlight the perspectives brought to the current sentencing process by seasoned trial judges. The panel also included the director of the Bureau of Prisons, the chairman of the Parole Commission, and the chief of the Probation Division of the Administrative Office of the United States Courts, who provided information concerning the operation of their respective organizations in the sentencing process.

The Center also scheduled five regional video seminars for newly appointed judges in fiscal 1985. At these four-day programs, groups of four or five new judges, and sometimes as many as twelve, receive an introduction to federal sentencing and corrections, to the basics of case and court management, and to the federal rules of evidence. Ideally, the judges attend just prior to taking the oath of office or shortly after going on the bench. The seminars employ instructional videotapes that are viewed under the tutelage of an experienced district judge. Some tapes present lectures given at earlier orientation seminars held at the Dolley Madison House in Washington, but the Center is moving away from reliance on these lectures toward the use of tapes produced specifically for these regional seminars. The atmosphere is relatively informal, questions

are encouraged, and the size of the group makes it feasible to focus discussion on topics of particular interest to the participants. The curriculum emphasizes procedural and management issues, topics with which new judges are likely to be least familiar, especially in light of the differences in perspectives toward case management between a judge and the attorneys who appear before the judge. Treating such subjects in the regional seminars has made it possible for new topics to be added to the curriculum of the week-long seminar in Washington. The early video orientation seminar also affords participants the opportunity to get to know newly appointed colleagues in nearby districts and circuits.

The regional seminars are arranged to allow the judges to spend one day at a federal correctional institution touring the facility, meeting with inmates, and discussing federal sentencing practices and policies. The correctional institutions at Lompoc, California, and Butner, North Carolina, were sites for 1985 seminars. Thus, new judges are able to visit a correctional institution early in their careers; given the regional basis of the video orientation programs, for many the institution is likely to be the one to which they will sentence defendants. This arrangement is in conformity with the 1976 Judicial Conference resolution "that the judges of the district courts, as soon as feasible after their appointment and periodically thereafter, shall make every effort to visit the various Federal correctional institutions that serve their respective courts." Of course, the Center's seminar is not intended to discourage visits to other institutions closer to a judge's place of holding court and, in fact, may serve to encourage such visits. The sentencing portion of the program is typically under the guidance of a judge on the Judicial Conference Committee on the Administration of the Probation System. In addition to the warden and other senior staff of the institution, representatives of the Bureau of Prisons, the Parole Commission, and a local chief probation officer are typically present at the program.

Every new judge receives help from experienced colleagues in the district to which he or she has been appointed; in most districts the process is informal, but in some it is more structured. In 1978 the Center undertook to encourage and to facilitate such in-court orientation. At that time, the district judge members of the Center's Board developed a checklist of items that should be covered in such a program. Copies of this checklist are provided to each new judge promptly after nomination, as well as to the chief judge of the district court to which the new judge has been nominated. During the

past year, the list was reviewed and amended by the Center's Bench Book Committee, chaired by Chief Judge William S. Sessions, formerly a member of the Center's Board.

The Center's extensive orientation programs for new district judges will undergo a thorough review by a committee appointed in 1985 by the Chief Justice. The committee is chaired by Chief Judge Warren K. Urbom of the District of Nebraska, a member of the Center's Board since 1982.

Continuing Education Programs for United States District Judges. The Congress, in creating the Federal Judicial Center, expressly provided that it shall "stimulate, create, develop, and conduct programs of continuing education and training for personnel of the judicial branch of the Government" (28 U.S.C. § 620(b)(3)). As part of its response to that mandate, the Center offers various seminars throughout the year to meet specific needs, although the centerpiece of its educational program for United States district judges remains the regional workshops, organized by circuit and held on an annual basis in most of them. Whether to have a workshop in any particular year is determined by the circuit; the Center works closely with the chief judge of each circuit as to this initial determination. Planning groups of district judges, appointed by the chief circuit judge, work with the Center to develop the curriculum for the workshops, some of which are held jointly with judges of a contiguous circuit. To ensure that each program responds to the needs and interests of the participants, the judges are sent a list of possible presentations well in advance of a scheduled workshop, and each has the opportunity to indicate his or her preferences. The response rate is high, and the needs so reflected are central in the development of workshop curricula. When the preferences are sufficiently varied, and there are enough judges in attendance to justify it, the workshops may feature more than one course at the same time, giving the judges a choice among electives.

Workshops serve to apprise judges of statutory developments affecting their work. An introduction to the far-reaching crime control legislation passed last October was on the agenda of every fiscal 1985 Center workshop held after the text of the legislation was available. In some cases the presentation preceded the Center's January videoconference on the legislation, and in others it followed the telecast, but in all cases it was a useful supplement. District and circuit judges at most of the fiscal 1985 workshops also heard presentations on the jurisdictional and structural changes

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imposed by the 1984 bankruptcy amendments to titles 11 and 28 of the *United States Code*.

Workshops also offer the opportunity to present information on subjects that the Judicial Conference of the United States has identified as deserving of special consideration by the federal judiciary, such as methods available to judges for dealing with "frivolous or meritless litigation in the courts." Such presentations were on the agenda of several circuit workshops in 1985, as they were in 1984.

The Center, working with the Clerks Division of the Administrative Office, also sponsored three civil case management workshops in fiscal 1985, continuing a program begun in 1982. These workshops are attended by federal trial judges, magistrates, clerks of court, and chief deputy and deputy clerks. They provide a forum for the exchange of techniques that have proved successful in case management and, more generally, for discussion of case management perspectives and approaches. The workshops were undertaken in response to the directive of the Judicial Conference in March 1982 that federal courts be provided with the means of ensuring expeditious processing of civil litigation.

Special Summer Programs for District and Circuit Judges. Since 1979, the Center has sponsored the attendance of district and circuit judges at summer programs on law school campuses. In some years, the judges participated in the regular continuing education programs of several major law schools. However, the Center has also developed its own summer programs exclusively for federal district and circuit judges, such as a week-long antitrust program held on the campus of the University of Michigan Law School in 1981 and a 1983 program for a relatively small number of federal judges on "Federal Remedies for Private Wrongs in the 1980s," designed in cooperation with Brigham Young University's J. Reuben Clark Law School.

In the summer of 1985, the Center presented a one-week seminar for federal judges on the campus of the University of Wisconsin Law School, a seminar similar in design and purpose to one it offered on the same campus in 1984. The theme of the 1985 seminar was statistics and expert testimony in the federal courts. Forty-five judges elected to attend, four of whom served in faculty roles.

The seminar explored various types of statistical tests typically offered as proof, the relevant federal rules of evidence, and the special problems presented by expert testimony in this area. The goal

of the seminar was not to develop an econometrician's mastery of quantitative methods, but rather to foster an understanding of underlying concepts such as random and nonrandom distributions, thus enhancing the participants' ability to understand expert testimony and its possible contributions to the fact-finding process. The seminar used a series of specially prepared case studies and related readings in the areas of resale price maintenance, securities market manipulation, employment discrimination, and the present value of future earnings awarded in damage actions; these cases were treated both in small-group discussion sessions and in plenary lecture sessions.

The seminar's planning committee, appointed by the Chief Justice, was chaired by Chief Judge Howard C. Bratton of the United States District Court for the District of New Mexico, a member of the Center's Board.

State-Federal Programs. The Center, through its Division of Inter-Judicial Affairs and Information Services, has supported the work of state-federal judicial councils since they were created in 1971 at the suggestion of the Chief Justice. In 1984, the Center helped arrange continuing education programs presented as integral components of the meetings of state and federal judges held under council auspices. These proved successful and the Center continued to respond to such requests in fiscal 1985, supporting sessions in Alabama and in North Carolina. Habeas corpus and postconviction relief, sources of considerable state-federal tension, were treated this year. Because of the response to these programs, the Center has also prepared a series of videotape lectures featuring Professor Ira Robbins of American University, who has lectured at each of the Center-sponsored seminars.

Education and Training Publications. The Center provides a range of educational monographs and manuals on issues of interest to federal trial judges. The *Manual on Employment Discrimination Law and Civil Rights Actions in the Federal Courts*, prepared by Judge Charles R. Richey of the United States District Court for the District of Columbia, enjoys wide use. The fourth edition of the manual was published late in 1984, and plans are in place for the annual release of replacement pages with revisions and updates. The 1984 edition has also been published by several private law book companies, thus making the manual readily available to members of the bar.

The second edition of the *Manual on Recurring Problems in Criminal Trials*, by Judge Donald S. Voorhees of the Western District of Washington, also appeared during this fiscal year. First published in 1981 as an outgrowth of Judge Voorhees's presentation on criminal case management to newly appointed district judges' seminars, the manual serves as a ready desk and bench reference on such subjects as disruptive defendants, civil and criminal contempt, confessions, and severance of defendants. Altogether, it treats twenty-six topics.

Beginning in 1982, the Center commissioned a series of "annotated bibliographies/monographs" to provide judges with a quick overview of a subject-matter area, together with a guide to the literature. The series addresses subjects as diverse as fraud and civil liability under the securities acts and employment discrimination. In fiscal 1985, a monograph on appeals in Social Security disability benefits cases, *Disability Appeals in Social Security Programs*, was added to the series, and another on immigration law was commissioned.

Other Center monographs, not part of this special series, treat such topics as the rule of reason in antitrust cases, the law of class actions, legal issues arising under the so-called Black Lung Act of 1969, as amended, and most recently, the 1983 amendments to the Federal Rules of Civil Procedure.

An especially important and widely used publication that appeared in 1985 is *The Crime Control and Fine Enforcement Acts of 1984: A Synopsis*, prepared by a member of the Center's Research Division. Although developed specifically for the Center's January videoconference on the legislation (discussed further in chapter 4), the sixty-three-page synopsis is a free-standing reference source that summarizes the major substantive changes to the criminal code and the numerous changes in procedure and administration imposed by the two statutes.

Bankruptcy Judges. The Bankruptcy Amendments and Federal Judgeship Act of 1984 constituted the congressional response to the action of the Supreme Court in *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982), which held portions of the act of 1978 unconstitutional. The 1984 act was important in defining the structural relationship governing bankruptcy courts—now clearly identified as units of the district courts—and set forth a number of important jurisdictional provisions affecting the disposition of bankruptcy matters. In addition, the legislation revised

some of the substantive law of bankruptcy. The Center undertook a multitrack program to educate judicial personnel about these changes, continuing its efforts to educate district as well as bankruptcy judges about bankruptcy in the wake of the *Marathon* decision.

First, for district and circuit judges, the Center devoted part of its workshops to the changes to title 28 effected by the new legislation. The Center also revised the curriculum of its orientation and continuing education programs for bankruptcy judges. Finally, the Center produced two media programs, each reflecting the differing interests of Article III judges and bankruptcy judges. The program for Article III judges described the appointment of bankruptcy judges and their relationship to the district court, "core" and "noncore" proceedings, withdrawal, abstention, transfer of cases, jury trials, and bankruptcy appeals. The program for bankruptcy judges covered these matters briefly, but focused on the substantive changes to the bankruptcy law, including executory contracts and leases, labor contracts, avoiding powers, chapter 11 amendments and repurchaser agreements, and the legislation's consumer amendments.

In 1985, the Center also sponsored four regional continuing education seminars for bankruptcy judges. This curriculum, too, stressed the substantive amendments to the bankruptcy code, but dealt also with consumer-related problems, problems involving secured creditors, and the 1983 amendments to the Federal Rules of Civil Procedure.

Video orientation seminars under the guidance of experienced bankruptcy judges are the primary means of orientation for new bankruptcy judges to their duties. The two video orientation seminars held in 1985 treated such basic topics as elements of the bankruptcy code, debtors, creditors' fees and allowances, the administration of the bankruptcy court system, and effective case management. However, the Center now supplements its video seminars with a national seminar for newly appointed bankruptcy judges, offered no more frequently than once every two years. One such seminar is to be held in Washington, D.C., in September 1985.

Magistrates. When Congress created the position of United States magistrate in 1968, it specifically directed the Center to provide both full-time and part-time magistrates with "periodic training programs and seminars." It further provided that an introductory training program be offered within one year of the magistrate's ap-

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pointment (28 U.S.C. § 637). In accordance with that directive, the Center held four seminars in fiscal 1985 for full-time magistrates, and for part-time magistrates with substantial workloads. The seminars, held on a regional basis, covered such diverse topics as the 1984 amendments to the bail statutes, the trial of a civil case, the judicial role in lawyer discipline, habeas corpus litigation, problems that arise in cases filed by prisoners pro se under 42 U.S.C. § 1983, and Social Security disability cases.

In developing seminar curricula for magistrates, the Center follows the same basic procedure already described in connection with workshops for U.S. district judges, and many of the subjects offered are also the same. In addition, the Center works closely with the Magistrates Division of the Administrative Office and the Judicial Conference Committee on the Administration of the Magistrates System. Where possible, the Center arranges for a member of that committee to chair the seminar.

This year the Center offered two video orientation seminars for newly appointed full-time and part-time magistrates. These seminars include consideration of the magistrates' managerial and administrative duties, a review of the federal criminal and civil procedural rules, and intensive work on the Federal Rules of Evidence.

Clerks of Court and Supporting Personnel. Approximately half the supporting personnel in federal trial court clerks' offices have some direct contact with one or more Center seminars, workshops, or in-court programs each year. Such programs allow personnel to keep abreast of changes in their work dictated by legislation, requirements imposed by the Judicial Conference, Administrative Office policies, and changing patterns of district court civil litigation and criminal prosecutions.

Clerks of district courts and, in some cases, chief deputy clerks attended joint case management workshops with district judges and magistrates. Similarly, district clerks and jury clerks attended experimental workshops on juror utilization with district judges. A series of specialized seminars for district and bankruptcy court fiscal clerks explained relevant changes in Treasury Department regulations, Administrative Office audits of fiscal records, and internal controls, as well as the new fine-collection procedures mandated by the Criminal Fine Enforcement Act of 1984. This year the Center also sponsored several meetings of clerk's office personnel

who are primarily responsible for operating the computerized case management systems that have been developed by the Center.

In December 1984, the Center sponsored a national seminar for the clerks of the bankruptcy courts. The seminar treated such topics as automation and the relationship between the district and bankruptcy clerks' offices. It also provided an opportunity to review the changes effected by bankruptcy legislation passed the previous summer. Seminars for bankruptcy estate administrators focused on techniques for detecting trustee misconduct, recent chapter 11 developments, and review of fee applications. These seminars also served as an orientation program for new administrators.

Clerk's office personnel participate extensively in locally based educational activities, making substantial use of in-court training programs. In addition, the greatest proportion of the Center's tuition support funds (see chapter 4) traditionally goes to clerk's office personnel.

In fiscal 1985, the Center produced a six-part video series designed to introduce deputy clerks to the major elements of title 28 of the *United States Code* and to those provisions of the Federal Rules of Civil Procedure of particular interest to them. Modules in the series cover federal jurisdiction and court organization, pleadings, service of process, motions, juror utilization, and entry of judgment. If this series proves useful, the Center may produce other videotape orientation programs for deputy clerks.

Federal Public and Community Defenders, Assistants, and Investigators. Federal public and community defenders, assistants, and investigators are supported by funds administered within the federal judicial budget, and they fall within the scope of the Center's training responsibilities. By contrast, assistant United States attorneys are provided continuing legal education and intensive instruction in trial advocacy by the Department of Justice.

In December 1984, the Center presented an orientation seminar for assistant federal defenders at the Federal Law Enforcement Training Center at Glynco, Georgia. The program, developed in cooperation with the Administrative Office's Criminal Justice Act Division and a planning group of federal and community defenders, was a rigorous and comprehensive five-day treatment of the theory and practice of federal criminal defense, including such subjects as preliminary hearings, discovery, motions to suppress, the Federal Rules of Evidence, jury trials, sentencing, and posttrial motions.

Various provisions of the October 1984 crime legislation were also explained and analyzed.

The Center sponsored the attendance of twenty-two newly designated assistant federal defenders at a special program organized by the National Criminal Defense College at Mercer University Law School. This intensive two-week training session concentrates almost exclusively on the development of sophisticated advocacy skills in all facets of a criminal defense. The combination of this program and the orientation seminar provides new assistant defenders with a comprehensive introduction to criminal defense work. Federal defenders also have access to the Center's tuition support program.

The Center sponsored a seminar for defender investigators in St. Louis in October, held in conjunction with the annual meeting of the National Defender Investigators Association. Topics addressed at the Center seminar included investigating the multidefendant drug conspiracy case and the massive-document fraud case, as well as bank robbery investigations. The seminar also dealt with interviewing techniques.

B. Desk and Research Aids for United States District Courts

Bench Book for United States District Court Judges. The Center's *Bench Book*, as its name suggests, was designed as a resource volume for use by federal judges and magistrates during the course of litigation. It has grown to two volumes, now includes a number of forms, and is published in a loose-leaf format that readily accommodates both new material and revisions.

The second edition of the *Bench Book* was completed in fiscal 1985 and plans for a third edition of the publication are under way. The Bench Book Committee is chaired by Chief Judge William S. Sessions of the Western District of Texas, a former member of the Center's Board.

Bench Comments. The Center this year continued to publish these two- or three-page advisories to bring to the attention of federal trial judges and magistrates recent trends in appellate treatment of procedural problems encountered in trial. Each *Bench Comment* is reviewed by several judges with expertise in the particular topic discussed. *Bench Comments* do not represent official policy, nor are

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they to be cited; they include reference to original sources and are provided to federal judges for information only.

Bench Comments distributed in fiscal 1985 addressed topics such as standards for granting bail pending appeal and standards applicable to challenged material contained in presentence reports.

Chambers to Chambers. Issues of *Chambers to Chambers* are similar to *Bench Comments*, but focus on case management and chambers management techniques that federal judges have found helpful. Each issue is reviewed by several federal judges prior to distribution. Like *Bench Comments*, these publications do not represent official Center policy.

Subjects treated during fiscal 1985 included local guides to discovery and an examination of seriatim jury verdicts, as used by the trial court in the libel case of *Sharon v. Time, Inc.*

C. Automated Case and Court Management Support for District Courts

Guided by the Judicial Conference of the United States and working with the Subcommittee on Judicial Improvements of the Judicial Conference Committee on Court Administration, the Federal Judicial Center and the Administrative Office of the United States Courts have jointly developed an automation plan for the federal courts that has a five-year time horizon and is updated annually. The 1985 revision of the *Five-Year Plan for Automation in the United States Courts* reflects comments received from the courts in response to the initial draft of the plan, and it more clearly specifies the division of automation development and support responsibilities between the Center and the Administrative Office. The material that follows details the current year's activities relevant to district courts.

Civil Case Management System. The Center is continuing its development of a totally electronic civil docketing system. The progress of this project has been greatly aided by the Center's prior work with its New Appellate Information Management System (New AIMS), which is discussed in chapter 3. The similarities between docketing routines have allowed the civil project to take advantage of programming already accomplished for New AIMS and to complete much of the coding faster than would otherwise have been possible.

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During fiscal 1985, the number of pilot courts for the civil project was changed twice, ultimately being reduced to two: the District of Arizona and the District of the District of Columbia. The plans as originally developed, and subsequently expanded, called for testing the automated civil system in four pilot districts during the coming fiscal year, but these plans were dependent on the acquisition of appropriate hardware for these courts. Because of procurement difficulties encountered by the Administrative Office, delivery of the hardware for the pilot courts was delayed. However, the Center has been able to lease interim equipment to allow the project to go forward as scheduled in two pilot courts.

Administrative Applications. The Center has completed its development of the four administrative applications called for in the five-year plan: personnel records, physical property inventory, court reporter management information, and attorney roll and admission requirements. The district courts that worked with the Center to develop and test these applications were the Eastern District of Michigan, the District of Nebraska, the District of New Jersey, and the Southern District of Texas. When transfer occurs, responsibility for maintenance and subsequent enhancement of these applications shifts from the Center to the courts themselves and to the Administrative Office.

Training in Automation. Decentralization of automation results in significant added responsibilities for the courts in managing the new hardware and software systems and, therefore, in new training responsibilities for the Center. Too little training delivered too late is a prescription for trouble, and experience has shown that very substantial training is, in fact, required. The Center has assumed responsibility for providing necessary training to the court personnel who will manage the new hardware and software systems, including a training program that begins even before any hardware is installed. When a court is scheduled to receive decentralized hardware as specified for the clerk's office under the five-year plan, the Center will assign someone experienced in automation preparedness to assist the clerk of court in identifying the training requirements of that court. Once the court designates the personnel to be responsible for the day-to-day administration and support of its computer systems, the Center will provide the necessary intensive technical training to these system managers. Analogous management-oriented automation training will also be offered to the clerk of court to ensure that the court will be able to receive maximum benefit from the systems to be installed.

As part of its systems development process, the Center also develops comprehensive application-oriented training materials for use by the courts and the Administrative Office.

D. Automated Case and Court Management Support for Bankruptcy Courts

The Center has been working on the development of a completely electronic docketing and case management system in three pilot bankruptcy courts—the Western District of New York, the Western District of Texas, and the Western District of Washington. Progress has been relatively rapid--allowing the Center to maintain a rather optimistic schedule for this project—due in large measure to the ability to replicate the approach developed for civil case management. The nature of bankruptcy operations, however, has also required new solutions to problems unique to bankruptcy. The information requirements of estate administrators have been of particular interest, as have been the courts' needs for high-volume notice production.

The Center is exploring the possibility of using computer-driven voice synthesizers to deliver basic case-related information in response to telephone inquiries. This is the technology now used by the "information" operators at telephone companies. It is estimated that this technology could effect considerable savings in the time now spent by deputy clerks who are on the telephone virtually full-time answering routine queries about matters such as scheduled dates for initial bankruptcy hearings.

E. Management of the District Courts

Programs for Chief District Judges and Their Staffs. The directors of the Center and the Administrative Office invite every newly elevated chief district judge to visit both agencies to become better acquainted with those aspects of our work relevant to a chief judge of the district court. This program, initiated as a result of a suggestion made at a meeting of the Conference of Metropolitan District Chief Judges, continues to prove useful.

In 1984, the Center also published the *Desk Book for Chief Judges of United States District Courts*. The *Desk Book*, prepared in close consultation with sitting and former chief district judges, as well as

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the Conference of Metropolitan District Chief Judges, is designed for use by all chief judges and should be especially helpful to those newly elevated. It provides chief judges with a perspective on the position of chief judge within the scheme of federal judicial administration; describes the agencies of federal judicial administration; reviews the chief judge's relationships with other judges, officers, and employees of the court; and details the chief judge's relationships to various aspects of federal district court administration, including case management and related tasks, personnel management, procurement and construction, court security, and media and bar relations. The *Desk Book* refers to official policies and guidelines, where they exist, and suggests approaches to court management found useful by experienced chief judges. The Center plans to issue replacement pages to keep the *Desk Book* current.

In 1985, the Center held another of its workshops for chief district judges and clerks of court as management teams, this time at the request of the Fourth and District of Columbia Circuits. The workshop considered the roles of the chief judge and the clerk of court and examined specific operational problems facing the district courts. Also included was a presentation on the experience of district courts in other circuits with selected programs of alternative dispute resolution.

Conference of Metropolitan District Chief Judges. The Conference of Metropolitan District Chief Judges, an integral part of the Center's judicial educational program, consists of the chief judges of district courts with six or more authorized judgeships. The conference meets semiannually to allow its members to hear reports on subjects of particular interest to large district courts and to learn from one another about techniques that have proven successful in the administration of their respective courts. In addition, each session includes presentations on legislative developments and Judicial Conference actions.

By appointment of the Chief Justice, the chairman of the conference is Judge Walter E. Hoffman of the Eastern District of Virginia, director emeritus of the Center. The Center's deputy director serves as executive secretary of the conference.

Local Rules. A year ago, the Center's Information Services assumed responsibility for the collection and maintenance of the Local Rules Index, a function initiated by the Clerks Division of the Administrative Office. Using an automated data base, the Center is able to respond to inquiries concerning the content of

local rules governing a wide variety of subjects relevant to district court administration and litigation practices. The service has been particularly useful to courts that are considering revisions in their own rules and has proved valuable in other research efforts. This service was recently expanded to include appellate court rules as well.

The utility of the index has been substantially enhanced by the cooperation of the clerks of court, who have been remarkably faithful in promptly forwarding both amendments to existing rules and newly promulgated rules.

Visiting Judges and Court Calendars. The Center's Research Division published two reports in fiscal 1985 that describe procedures intended to enhance the effectiveness of court processes. *Visiting Judges in Federal District Courts* draws on the experience of judges who have been frequent visitors and of courts that have received substantial aid from visiting judges. The report presents a series of suggestions for making the visits both productive and pleasant.

The Joint Trial Calendars in the Western District of Missouri provides a detailed description of the operation of a procedure designed to strengthen overall calendar management by making the trial calendar more predictable and, as a result, the case-flow expectations of the court more credible. Under this procedure, judges take joint responsibility for clearing a special calendar of trial-ready cases at periodic intervals. The report details the types of cases that are included on this special calendar.

F. Research on the Trial Litigative Process

There has been a marked burgeoning of initiatives on the part of federal courts in experimenting with how best to handle their caseloads. It is true that some of the stimulus is rooted in the problems of volume, so often referred to in current literature. Many of the programs, however, have been undertaken in response to the much more basic drive to improve the way courts meet their responsibilities. The typical pattern is that a single judge, or sometimes a court, experiments with a new technique. If it appears successful, it is continued, and as word of its success is shared with other judges, it will be tried by others. The Center, through its Research Division, describes such programs for the benefit of other courts. Where appropriate, the Center also studies the effects of such innovations and publishes its findings. The primary goal of the Center's activity

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has been to ensure that the courts have access to sufficiently detailed information to permit informed judgments about the desirability of adopting, adapting, or rejecting a particular innovation.

Court-Annexed Arbitration. Court-annexed arbitration remains a major focus of interest in the search for methods of providing fair, speedy, and less expensive disposition of federal cases. The experience of the Eastern District of Pennsylvania and the Northern District of California, documented in earlier Center reports, has heightened interest in this approach.

In early fiscal 1985, the Administrative Office allocated funds appropriated by the Congress to enable eight additional district courts to initiate programs of court-annexed, nonbinding arbitration. As is appropriate in the case of experimental programs, there are very substantial differences between the participating courts, not only with respect to specific techniques but also with respect to basic goals. An essential element of the expansion is the collection of information to facilitate appraisal of the programs and of the variations introduced by the additional courts. It should occasion no surprise if the programs do not prove uniformly successful. On the contrary, it would be quite surprising if they do. Not only do the implementing rules differ substantially, but so do the local legal cultures in which court-annexed arbitration is being introduced. It is precisely these differences, however, that make the project promising, one with the potential of providing valuable information concerning this technique in particular and judicial innovations in general.

To assist the new pilot courts, the Center sponsored a one-day workshop in March 1985 in San Antonio for a judge and the clerk of court from each pilot court. The workshop, which drew in part on the experiences with court-annexed arbitration in Philadelphia and San Francisco, reviewed pitfalls in setting up a program and provided guidance on operational matters such as selecting and compensating arbitrators, the logistics of scheduling arbitration hearings, arbitration within the context of the court's civil case management procedures, trial de novo, sanctions, and data and record keeping.

The Center's Research Division is presently working with all ten courts involved in the arbitration pilot programs. The final report on the programs is to cover (1) the form and structure of each program; (2) the overall experience, including the number and types of cases moving through the system, timing, and form of disposition;

and (3) satisfaction with the program as expressed by the major participants—judges, lawyers, and litigants.

Studies of other, more localized programs completed during the year include *Mediation in the Western District of Washington* and *The Wayne County Mediation Program in the Eastern District of Michigan*. Though both of these programs are referred to as mediation, they differ from each other significantly, reflecting special local needs and the availability of particular local resources. The state courts in Wayne County, Michigan, have long had a dispute resolution program, one that originated with a significant mediation element but now emphasizes the neutral evaluation of cases. Both state and federal courts currently have procedures for referring cases to the program. Western Washington, confronting a serious shortage of judge power, developed with the local federal bar association a program to refer cases to uncompensated attorneys who seek to induce settlements.

Summary Jury Trials. The summary jury trial concept was born in the Northern District of Ohio, in the courtroom of Judge Thomas D. Lambros; the technique was specifically endorsed by the Judicial Conference in fiscal 1985. A 1982 Center report, *Summary Jury Trials in the Northern District of Ohio*, described its development and operation. Judge Lambros's basic idea—using a six-person jury to render a nonbinding evaluation of a civil case after hearing summary presentations of the evidence by each side—has been credited with prompting settlements in cases that appeared to be heading resolutely to trial. The concept has spread, in variations on Judge Lambros's theme, to courts around the country.

In 1985, the Center produced a one-hour videotape program on "Summary Jury Trials in the Western District of Michigan" in cooperation with judges and staff of the court and with the bar. Featuring Judge Richard A. Enslen and Magistrate Hugh W. Brenneman, Jr., the program illustrates aspects of the summary jury trial in three fictitious cases, and is designed to introduce the concept to judges and lawyers nationwide. It includes a pretrial conference; excerpts from presentations of evidence in product liability, employment discrimination, and breach-of-contract cases; and a postverdict settlement conference.

Settlement. The most pervasive alternative to the full panoply of activities leading to trial, verdict, and judgment is clearly a settlement negotiated by the parties. The proper role of judges in facilitating settlement engenders continued debate, but it is clear that

court involvement in settlement occurs with varying intensity. Moreover, recent research shows that litigants favor judicial involvement in the settlement process. The Center has prepared a report describing the major approaches to settlement intervention used by federal judges. This preliminary report will be used in a small conference in the fall of 1985 to explore how judges can identify the obstacles to settlement and select the approach most suitable for an individual case. The substance of the conference discussion will be incorporated into the report for subsequent publication.

A conference was also convened to explore the special problems inherent in asbestos litigation and the responses that have proved successful. A report, *Asbestos Case Management: Pretrial and Trial Procedures*, published in February 1985, was based on Center research and discussion by the group of judges, clerks, and magistrates—from courts with substantial asbestos case filings—who participated in the conference.

Discovery. Continued calls for greater court activity in controlling the discovery process have resulted in a request from the Advisory Committee on the Federal Rules of Civil Procedure of the Judicial Conference for an assessment of lawyer satisfaction with local rules limiting the number of interrogatories that can be served without special permission of the court. A survey of a sample of lawyers appearing in cases subject to the rules has been completed, and the results will be reported in the fall of 1985.

Early this year, the Center completed production of a two-part (one hour each) videotape program, drawn from a two-day experimental seminar convened by the Chief Justice in late 1983 to allow judges, practicing attorneys, and law professors to share perspectives on the causes of, and promising remedies for, abusive discovery practices. The workshop was held in the shadow of the August 1983 amendments to the Federal Rules of Civil Procedure. One part of the videotape program deals with causes of discovery abuse; the other part deals with the role of sanctions and incentives in reducing it. The program is designed primarily for use in local educational programs, although it is also available on audiotape for individual listening.

Federal Rule of Civil Procedure 11. Court control over the litigative activity of lawyers outside the courtroom has been receiving increased attention as both lawyers and judges accept the need for greater efforts to curb abuse of the litigative process. Discovery abuse has been a major area of interest, but the 1983 amendments

to the civil rules focus sharply on the need for sanctions in response to frivolous filings of "pleading[s], motion[s], or other paper[s]." A Center research project has asked judges to react to illustrative examples of lawyer behavior that might infringe the standards announced in the new rule 11. Analysis of the results indicates a toughening of judicial attitudes toward questionable lawyer behavior and agreement concerning the desirability of eliminating frivolous filings. However, the results also show a continuing variety of viewpoints about the specific purposes of sanctions (e.g., deterrence, compensation) and objective standards. The report will be published in early fall of 1985.

Federal Rule of Civil Procedure 68. There has been considerable interest in the proposal to vitalize the provisions of rule 68 of the Federal Rules of Civil Procedure to discourage the prolonging of litigation after a reasonable offer has been received by imposing upon the unreasonable party his or her opponent's attorneys' fees. There are, of course, significant policy issues involved, and arguments have also been advanced by economic analysts that the proposed revisions would narrow rather than expand the opportunity for negotiated settlements. A Center report entitled *The Influence of Rules Respecting Recovery of Attorneys' Fees on Settlement of Civil Cases* responds to those arguments through a theoretical economic analysis comparing the influence of five different attorney fee rules on litigants' financial incentives.

Costs of Litigation. Filing fees have long been a part of the process of regulating the flow of case filings into the federal courts. The fees have never been intended as an obstacle to filing, but have been looked upon, rather, as a token of serious purpose in commencing lawsuits. Provisions for waiving the fees for indigents have been applied almost universally to prisoner petitions. *Partial Payment of Filing Fees in Prisoner In Forma Pauperis Cases in Federal Courts: A Preliminary Report* describes procedures used in several districts as an alternative to waiver of the total fee—these courts adjust the filing fee to the amount of income available to the prisoner.

Two additional publications and a project in progress, all in the area of attorneys' fees, reflect the rising concern with various aspects of the courts' responsibility for fee issues in federal litigation.

Judicial Regulation of Attorneys' Fees: Beginning the Process at Pretrial is a report on the appraisal by a cross section of lawyers of an innovative pretrial order by Judge John F. Grady of the North-

ern District of Illinois, designed to regulate and limit attorneys' fees during the course of the *Continental Illinois Securities Litigation*. The report records approval of the general approach and suggestions for improving the specific order.

Building on Professor Arthur Miller's seminal report *Attorneys' Fees in Class Actions* (Federal Judicial Center 1980), the Center published a report entitled *Attorney Fee Petitions: Suggestions for Administration and Management*. The new study uses a case management perspective to review cases, statutes, local rules, and other materials affecting judicial management of attorney fee petitions.

Finally, responding to suggestions from the Judicial Conference Advisory Committee on Civil Rules, the Center is exploring the British experience with taxing masters to learn how, if at all, that experience might be transferred to the American scene or at least influence federal practice. It develops that this inquiry comes at a propitious time: Though the British have used taxing masters for many years as part of their system of shifting attorney fees, the procedure has become so complex that they are in the midst of studies aimed at simplification and reform. The Center report will examine present practices in the United States for dealing with court-approved attorneys' fees and will assess present resources that might be used, in the context of our own system, to achieve some of the benefits believed to flow from the British approach.

Manual for Complex Litigation 2d. This manual of suggested procedures for judges who are assigned complex litigation is a successor volume to the frequently cited *Manual for Complex Litigation* (5th ed. 1982). It has been prepared by a Board of Editors chaired by Chief Judge Sam C. Pointer, Jr., of the Northern District of Alabama, and is scheduled for publication in the fall of 1985.

Role of United States Magistrates. Effective use of the courts' resources is a first-order concern in the continuing effort to render the highest quality services at the least cost to the public. The delegation of tasks to magistrates while maintaining quality through judicial supervision of the magistrates' work has been looked upon as a major opportunity to conserve scarce judicial resources. A study published in 1983 described the scope of duties assigned to magistrates and the processes of assignment. The report of the second phase of that study, *The Roles of Magistrates: Nine Case Studies*, was published this year and details the varying arrangements established in nine federal districts for using magistrates to meet the needs of litigants.

G. Jury Projects

Pattern Jury Instructions. The Center continues to support the development of pattern jury instructions for use in criminal cases through the Subcommittee on Pattern Jury Instructions of the Judicial Conference Committee on the Operation of the Jury System. The first set of instructions published in 1982 was prepared in the context of uncertainty about criminal code reform and was therefore limited to trial matters thought unlikely to be affected by the proposed legislation. The work of the subcommittee, chaired by Judge Thomas A. Flannery of the District Court for the District of Columbia, is now expanding into more substantive areas; it may eventually embrace civil as well as criminal trials.

Juror Utilization. In 1981, the Judicial Conference of the United States asked each circuit council to undertake to improve its juror utilization record. The underlying goal is to ensure that a sufficient number of jurors are available when needed while reducing to an absolute minimum the number of citizens who are called for jury duty, but are not used. The Conference encouraged the circuit councils to experiment with various techniques designed to accomplish this end and, in addition, specifically suggested education in juror utilization as one means of achieving improved performance.

To assist in this effort, the Center, in cooperation with the Administrative Office's Clerks Division, has begun experimenting with juror utilization workshops for "jury management teams"—typically, the judge responsible for jury matters, the clerk of court, and the person in the clerk's office with direct responsibility in this area. In experimenting with the "team approach," the Center and the Clerks Division were encouraged by the success of the joint civil case management workshops described earlier in this chapter. Three juror utilization workshops were held in fiscal 1985. They stressed techniques of effective juror utilization, not simply as money-saving devices but also as ways of easing the frustration of citizens called for jury duty, thus enhancing the effectiveness of the jury process. Nevertheless, one court reported annual savings of a quarter of a million dollars as a result of implementing a simple technique described at one of these workshops. The juror utilization workshops are also coordinated with the Judicial Conference Committee on the Operation of the Jury System, and with the General Counsel's Office of the Administrative Office, which provides staff support to that committee.

The Center is presently preparing a juror utilization manual, based in part on information shared in the course of some of these workshops. Publication is expected in 1985.

Videotaped Jury Panel Orientation. Some courts have had the practice of bringing in an entire month's jury panel at the beginning of the month for a welcome and orientation speech by the chief judge. By videotaping the chief judge's address, it is possible to avoid that extra day of service by jurors who are not actually needed until a later time. The Center has worked with several chief district judges to produce their orientation remarks in the form of high-quality video presentations that can be shown to jurors as they are summoned, thus eliminating the need for a separate orientation session. In one metropolitan court, the clerk's office estimates that the availability of the videotaped remarks has produced well over $100,000 in annual savings in juror costs. Even courts that do not use the tape to avoid a special orientation day find that the videotape ensures that all jurors receive all necessary orientation information. Finally, there are, of course, savings in judges' time as well.

H. Improvement of Advocacy in Federal Trial Courts

For the past five years, the Judicial Conference Implementation Committee on Admission of Attorneys to Federal Practice, chaired by Chief Judge James Lawrence King of the Southern District of Florida, has coordinated a pilot program in which thirteen federal district courts have tried one or more of the admissions programs recommended by the Devitt Committee in its 1979 report. The Center prepared for the implementation committee a descriptive paper reporting the experience of the pilot courts and the views and impressions of those most intimately connected with the programs. The committee is expected to report its findings and recommendations to the Judicial Conference this fall.

A related effort to improve trial advocacy is proceeding under the aegis of the ad hoc Judicial Conference Committee on the American Inns of Court, chaired by Senior Judge Aldon J. Anderson of the District of Utah. The Inns provide a forum to foster law students' trial practice skills and their understanding of professional responsibility. A local Inn typically involves federal and state judges, law professors, and trial lawyers. The Center this year pro-

duced a thirty-minute video program illustrating the various activities of the Inns for interested individuals who may wish to create one. The video program is introduced by the Chief Justice and narrated by Chief Judge Howard T. Markey of the United States Court of Appeals for the Federal Circuit. The response was immediate and broad based; within a few weeks of the program's completion, more than one-fifth of all federal court districts had requested copies for viewing.

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II. FEDERAL SENTENCING AND PROBATION

A. Continuing Education and Training

Sentencing Institutes. The Congress, in 1958, authorized the Judicial Conference of the United States to convene sentencing institutes at the request of either the attorney general or, as has been the practice, a circuit chief judge (28 U.S.C. § 334). Since 1974, at the request of the Judicial Conference Committee on the Administration of the Probation System, the Center has been involved in the planning, administration, and evaluation of these institutes. Center support is a coordinated effort of its Research Division and its Continuing Education and Training Division.

Two sentencing institutes were held in 1985. One, for the judges of the Eighth and Tenth Circuits, was held in Long Beach, California, and featured a visit to the federal correctional facility at Terminal Island. The Fifth and Seventh Circuits met in Durham, North Carolina, and visited the Butner correctional facility. Both institutes included tours of the facilities, workshops with inmates, and small-group discussions on sentencing options in a variety of hypothetical cases, under both the current sentencing guidelines and hypothetical sentencing guidelines that seek to model those of a sentencing commission. The institutes also included presentations and panel discussions on new developments regarding the 1984 crime control legislation. At one institute there was discussion of community service as an alternative to incarceration.

Orientation and Continuing Education for United States Probation Officers. The orientation and continuing education needs of United States probation officers are highly varied, and many different types of programs are required to meet them. Similar diversity characterizes the needs of pretrial services officers in the districts that have elected to establish separate pretrial services offices.

Probation and pretrial services officers operate within a framework of national laws and policies established by the Judicial Confer-

ence. These officers complete thousands of investigations. In a large number of cases the judge receiving these reports is sitting by designation in another part of the country. Whether sitting at home or elsewhere, judges should be able to feel confident that the reports they receive reflect national standards and operating procedures; they should be able to have similar confidence in a probation or parole supervision file that comes to them after a defendant's long period of supervision in another district. It is essential that newly appointed officers understand and appreciate the importance of these national policies and that their orientation impress upon them their responsibilities as members of a national system.

It is also true, however, that conditions vary considerably throughout the United States in terms of defendants' and probationers' particular problems and needs, and training must be responsive to local conditions. The Center has been sensitive to these dual needs. It has laid great stress on a national framework for probation training and, at the same time, has encouraged local and regional training designed by local officers, who use the Center's media resources and draw on Center staff for assistance. The network of training coordinators, developed by the Center and described in chapter 4, plays an important role in this endeavor.

The Center orients new probation and pretrial services officers to the federal judicial system and to the national probation system through regional programs. Although all federal district courts have both probation and pretrial responsibilities, the manner in which those responsibilities are allocated among staff varies among the districts. Some districts, in addition to probation offices, have independent pretrial services offices, and the officers in those offices work exclusively on pretrial matters. In most districts, however, both the probation and the pretrial functions are handled by the probation office, and the officers in those districts may have probation as well as pretrial supervision responsibilities. Because of these differences among districts, orientation programs for probation and pretrial service officers are held consecutively in four-and-one-half-day sessions. The first two days cover probation material and are attended by officers with probation responsibilities; the last two days cover pretrial material and are attended by officers with pretrial responsibilities. All officers attend that part of the third day which covers the national character and scope of the federal probation and pretrial system. This segment also provides opportunity for those who are attending only the probation segment to meet their pretrial colleagues who are attending only the pre-

trial segment. In addition to covering national policy and task issues, the joint session includes instruction on the federal criminal justice agencies with which probation and pretrial services officers frequently work in the course of their careers.

The instruction at these programs includes both live and videotape presentations, with discussion invited in connection with both types. The live presentations feature the regional probation administrator and pretrial services specialist for the participating circuits, both of whom are members of the staff of the Administrative Office; experienced officers from districts represented by the attendees as well as from other districts, giving the programs more of a national flavor; and, from time to time, regional or local representatives from the Federal Bureau of Prisons and the U.S. Parole Commission.

The regional approach to orientation will be especially valuable in accommodating the large influx of probation and pretrial officers anticipated in the next several years. By the end of fiscal 1985, the Center will have held sixteen programs for approximately 250 new probation officers and 25 new pretrial services officers.

Regional seminars for experienced probation officers are organized to serve groups of districts in a particular geographic area. Typically, the curriculum begins with sentencing issues and includes case management, probationary supervision, counseling techniques, the psychology of drug addiction, and related topics. These seminars are planned largely by the participating districts' training coordinators and are responsive to local needs. Presentations by representatives of the Administrative Office Probation Division, the Bureau of Prisons, and the Parole Commission are often included.

Topical seminars designed to meet specialized needs of high priority are also conducted by the Center. Recent developments—such as fiscal 1985's 10 percent growth in the total complement of federal probation officers and the recently enacted crime legislation—have contributed to the increasing size and complexity of the probation and pretrial services system. Those factors, in turn, have created the need for improved management and supervision within the system. To help satisfy that need, the Center this year developed and conducted two supervisory skills seminars for recently promoted supervisory probation officers. Similarly, it developed and conducted two seminars for pretrial services officers, giving particular attention to the new bail amendments and the development of revised pretrial supervision guidelines.

On-site technical training is yet an additional element of the Center's educational program. In fiscal 1985, the Center planned sixteen on site instructional programs on techniques for identifying probationers' drug use and drug dependency. These programs built on the Center's experience in 1982 and 1983, when it organized teams consisting of an officer from a pilot pretrial services district and a Probation Division staff member to help nonpilot districts implement pretrial services pursuant to the passage of the Pretrial Services Act of 1982.

Probation officers make heavy use of resources for local training, including the Center's media library, under the umbrella of the Center's training coordinator program. Local programs in fiscal 1985 gave special emphasis to relevant provisions of the October 1984 crime control legislation, but also included such topics as financial investigation techniques, improved writing skills, personal safety, and counseling of alcoholic clients.

Finally, probation officers receive Center support to attend training programs offered by other educational institutions and organizations. Of special interest is the three-year program offered by Fordham University leading to a master's degree in sociology with a specialization in probation and parole practice. The Center regularly defrays a portion of the cost of this program for federal probation officers. Most of the course work is done in the officers' own cities, but those enrolled also attend a one-week residential seminar at Fordham each semester. Forty-two of the program's graduates have been United States probation officers, the first of whom were graduated in 1979. During fiscal 1985, the Center funded the participation of two officers in the first week-long residential session and three in the second.

B. Probation and Sentencing Research

Drug Aftercare Program Evaluation. The Center's Research Division is conducting a multiphase project to study and document the effects of the drug aftercare program as administered by the Probation Division of the Administrative Office, a program intended for selected drug-dependent probationers and parolees. The Center's report on the first phase of the study was published in 1984. Entitled *A Process-Descriptive Study of the Drug Aftercare Program for Drug-Dependent Federal Offenders*, it dealt primarily with the operation of the program, the kinds of offenders involved, the services

provided, and administrative problems and the solutions implemented to address those problems. The second phase of the study, scheduled for completion next year, will address the experience with this program, focusing particularly on the outcomes for the participants.

Sentencing Reform Bill. The crime control legislation enacted in October 1984 has been referred to a number of times in this report. The impact of provisions already in effect, and the potential impact of the more dramatic elements of the legislation, which can be expected to introduce major changes in sentencing law a few years from now, have both required response by one or more of the Center's divisions.

Revision of *The Sentencing Options of Federal District Judges* to reflect the new legislation, a responsibility of the Center's Research Division, was completed in 1985. In addition, the Research Division provided staff support in revising those sections of the *Bench Book for United States District Court Judges* affected by these statutory provisions.

In 1977, the Center published a study of the use of observation and study reports to aid in sentencing. The report recommended a new approach to improve the utility of the studies to sentencing judges. The Center published a new study in 1985, *Observation and Study in the Federal District Courts*, which reports on current practices and recommends further steps to improve the process. We expect the interaction of the study's findings and the new Sentencing Commission's advice to produce significant changes in the procedures.

C. Probation Information Management System

The Probation Information Management System (PIMS) has been designed to be an automated information management system that will assist in compiling nationwide information on sentences imposed for various offenses and offenders. PIMS will also provide planning information for probation officers to use in tracking and analyzing their caseloads and statistics for probation office administrators' budget and personnel needs. The Center is continuing efforts to complete its PIMS responsibilities in the Northern District of Ohio probation office, and it is estimated that those responsibilities will be completed by November of 1985.

During the latter half of fiscal 1985, the Northern District of Ohio began entering data into PIMS in preparation for an Administrative Office evaluation of its effectiveness in accomplishing projected personnel savings.

The Center and the staff of the pilot district have learned several valuable lessons from their development experiences. For example, Center staff have had the opportunity to experiment with certain powerful programming procedures in developing some of the PIMS features. The district has improved internal operations by learning how to create and manage the production of office forms through advanced applications of word processing available on PIMS. As implemented, PIMS will permit the generation of more than a dozen separate reports that the chief and supervising probation officers can use as management tools.

III. APPELLATE COURTS

The Center's service to the federal appellate courts is limited to the twelve regional and one national intermediate appellate courts. By long-standing tradition, the United States Supreme Court has been autonomous with respect to its administrative, technological, and training support needs. The Center does, however, maintain close contact with the Court. The Chief Justice, as permanent chairman of the Federal Judicial Center's Board, is extensively involved with the work of the Center. The associate justices, too, attend various Center programs and make use of Center publications. The clerk of the Supreme Court, and occasionally other key personnel, serve as faculty members for Center programs.

A. Continuing Education and Training

Judges' Programs. The Center sponsors orientation and continuing education programs for judges of the United States courts of appeals in addition to the circuit workshops for district and circuit judges. Those workshops, although open to and often attended by appellate judges, were originally designed for and are typically oriented more to the needs of the district judges. It should be noted, however, that there appears to be increasing interest in these workshops on the part of appellate judges, and the Center is currently developing separate sessions for the appellate judges in attendance.

The orientation needs of new circuit judges are different than those of new trial judges: The appellate judge serves typically as one of a panel of three, and senior colleagues provide valuable guidance. Moreover, the newly appointed appellate judge does not have the same type of case management responsibilities as a trial judge has. Nevertheless, experience has demonstrated that there is value to educational programs designed for the newly appointed appellate judge, and the Center has, for some time, offered such programs whenever the number of newly appointed judges warranted them. In April 1985, the Center sponsored an orientation seminar for seventeen new federal appellate judges, the first such seminar since

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December 1982. Developed under the aegis of a planning committee appointed by the Chief Justice and chaired by Judge John D. Butzner, Jr., of the Fourth Circuit Court of Appeals, the seminar considered the appellate function and standards of review, appellate review of agency decisions, judicial ethics, the relationship of the appellate courts to the bankruptcy courts, constitutional torts, and appellate collegiality. An entire day of the seminar was devoted to opinion writing and editing.

Since 1977, the Center has also sponsored continuing education seminars for appellate judges on an approximate three- or four-year cycle. The most recent were two October 1983 seminars, one for judges in the circuits east of the Mississippi and another for judges in the remaining circuits.

The Center also provides other, more particularized educational programs for circuit judges. For example, judges who come to the appellate bench with no experience as trial court judges are offered the opportunity of attending one of the Center's video orientation programs for newly appointed district judges, as a means of acquainting them with the work and special burdens of federal district judges, whose actions they are called upon to review.

The Center's appellate judge educational program will benefit from the work of a committee appointed by the Chief Justice in 1985 and chaired by Judge Arlin M. Adams of the Third Circuit, a member of the Center's Board.

Appellate Clerks' Programs. A seminar for the clerks of the courts of appeals was held in November 1984. The seminar provided a forum for discussion of Center research and development, including systems for automated appellate case management, the proposed changes in the Federal Rules of Appellate Procedure, and reports from divisions of the Center and the Administrative Office. As it has in past years, the seminar provided an opportunity for each of the clerks in attendance to present reports and a statement of his or her needs. In addition, meeting as a committee of the whole, the clerks described to senior personnel of the Center and the Administrative Office their perceptions of likely developments in appellate case management.

The seminar for the clerks was scheduled to overlap with a seminar for appellate chief deputy clerks, in order to lend support to the concept of a management team in exercising administrative su-

pervisory control. The chief deputy clerks' seminar focused on topics relating to management and supervision.

The Center also sponsored a two-day seminar in June 1985 for the clerk and the clerk's office operations manager from each circuit court, which dealt exclusively with appellate case management and emphasized the circuit courts' liaison with both the district courts and the Supreme Court.

Senior Staff Attorneys' Programs. In May 1985, the Center provided the appellate courts' senior staff attorneys with a two-pronged educational program. It began with a one-day seminar covering two topics: techniques for discouraging and handling frivolous appeals and motions and implications for appellate courts of the 1984 amendments to the federal bail statute. The following day, the senior staff attorneys attended the annual seminar sponsored by the American Bar Association Committee on Appellate Staff Attorneys. That seminar, held this year in Philadelphia, covered a variety of topics, including automation developments, management challenges, legal writing, and recent Supreme Court decisions.

B. Research and Development on Appellate Court and Case Management

Appeals Expediting System. A detailed study of a program adopted by the Court of Appeals for the Ninth Circuit, the nation's largest federal court, to deal with the problems of congestion and delay was published by the Center in 1985. The report, *Administration of Justice in a Large Appellate Court: The Ninth Circuit Innovations Project*, was undertaken, at the request of the circuit, to determine the effects of the project on case processing and on the judges and their workload.

Screening Practices. For some years the courts of appeals have been using different procedures for different cases; oral argument followed by a published opinion is no longer standard routine. Submission without oral argument and decision by judgment order rather than a written opinion are commonplace. Determining the procedures appropriate for each case entails screening. The circuits vary substantially in how they go about screening, and this subject is one of significant interest and importance. In 1984 the Center began a major study of the screening process in the federal courts

of appeals, with some emphasis on determining the need for oral argument.

The first phase of the study, which looked at the various processes and standards adopted by courts of appeals for classifying cases and making initial tracking decisions, was completed in 1985 and is to be published in a report entitled *Deciding Cases Without Argument: A Description of Procedures in the Courts of Appeals.* Subsequent phases of the study will explore the actual operation of the programs, comparing how similar cases would fare under the various approaches.

Preargument Conferences. The courts of appeals of the Sixth and Ninth Circuits have requested assistance in evaluating circuit programs for preargument conferencing of cases. Three previous evaluations have been conducted by the Center, two in the Second Circuit and one in the Seventh Circuit, but the elements of the programs studied differ significantly. It is believed that carefully documented evaluation studies in controlled experimental conditions will contribute to decision making in these courts as they consider continuation or possible modification of their respective programs. The collective experience under a variety of approaches is also expected to be a relevant source of information for still other courts that are considering programs of this nature.

Judicial Councils. Work continued in fiscal 1985 on a study requested by the Conference of Circuit Chief Judges. The Center is preparing for consideration by circuit councils drafts of possible model rules for the implementation of 28 U.S.C. § 372, which deals with procedures for processing complaints of alleged misconduct by judicial officers. The drafts will be presented to the conference in the fall of 1985.

C. Automated Appellate Information Management Systems

The development and implementation of the New Appellate Information Management System (New AIMS) proceeded close to schedule in 1985. New AIMS has been designed as a full support system for appellate case management, including an electronic docketing facility that will be sufficient to replace existing manual docketing procedures. New AIMS has been the "flagship" application of the Center's case management automation efforts; indeed, New AIMS

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has provided a basis for the expedited development of software for the civil and bankruptcy case management systems for the district courts.

In April 1985, the Center began the process of transferring responsibility for the operational support and enhancement of New AIMS to the Administrative Office; this transfer process is a complex one, however, and will not be completed during the 1985 fiscal year. Following the transfer of New AIMS, the Center will continue to be involved with automation for the appellate courts: The five-year automation plan discussed in chapter 1 calls for the Center to undertake an investigation of how best to provide direct access to data base information by judicial chambers. There are both informational and technical questions to be raised and resolved in this analysis, and it is likely that similar studies and tests will be performed in the district court setting as well.

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IV. CENTER ACTIVITIES WITH SYSTEMWIDE IMPACT

A. Continuing Education and Training

Seminars and workshops cannot satisfy all of the education and training needs that arise within an institutional structure as heterogeneous as the federal judicial system. Once the mainstay of the Center's educational efforts, they are today but one element in a much broader array of offerings that include local training and audiovisual media programs. Such alternatives are often more timely, more effective, and more efficient than the more traditional offerings. Certainly, they are more readily tailored to specific needs and lend themselves to flexible scheduling, suited to the convenience of participants. Other factors also militate in favor of developing alternatives to training involving travel. The Center's annual appropriation for travel has not risen commensurately with the increase in the size of the federal judicial system or with the spiraling cost of travel. Thus, even with judicious site selection for regional seminars and careful attention to the availability of reduced travel fares, the search for alternative forms of training has been accorded high priority.

Education on the October 1984 Crime Legislation. Although it had been on the legislative agenda for many years, the passage of far-reaching crime control legislation late in the life of the 98th Congress came largely as a surprise to the federal judiciary. The twenty-three-title Comprehensive Crime Control Act of 1984 was signed into law on October 12, and most of its major provisions took effect that day, although some, including major changes in federal sentencing, did not. The Criminal Fine Enforcement Act of 1984 was enacted October 30, 1984, to take effect in January 1985. These changes were relevant not only to judges—trial and appellate—but to a large number of others within the system.

The Center took immediate steps to familiarize all third branch personnel affected by the new statutes with their provisions. These steps included modifying the already developed curricula for pro-

grams for judges, magistrates, probation officers, and fiscal clerks to provide overviews of the new laws. By early January, a one-hour introductory lecture by Anthony Partridge of the Center's Research Division was available on videotape and audiotape.

On January 17—barely three months from the date of enactment of the Crime Control Act and less than three months after enactment of the Criminal Fine Enforcement Act—the Center broadcast a four-hour, closed-circuit video seminar to some thirty sites across the country, selected to accommodate personnel in more than two-thirds of the ninety-four federal districts. The broadcast was seen by more than 2,200 persons, mainly by district judges and magistrates, probation and pretrial services officers, federal defenders, and clerk's office personnel, but also by some participants from United States attorneys' offices and members of the private defense bar. Viewers had the opportunity to telephone questions to the faculty, and the responses were telecast as part of the seminar. Edited videotapes of the seminar, provided to each district court in the country, have been used by an estimated 6,000 persons and have served as a basis for local, districtwide training programs.

The program, chaired by Judge Robert R. Merhige, Jr., of the Eastern District of Virginia, provided an overview of the legislation—including the sentencing changes scheduled to take effect in 1986, the substantive changes in the criminal code, changes in the bail statute, abolition of the Youth Corrections Act and other changes affecting juveniles, the new provisions on fines and special assessments, revisions of the insanity defense, the enlarged forfeiture provisions, and numerous miscellaneous provisions. Neither telecasts nor videotapes alone, however, could suffice to bring the details of this complex legislation to interested federal judicial system personnel. Accordingly, the Center also published a synopsis of the new provisions. The demand for this work has been heavy and it has been reprinted twice.

Few Center educational programs held since November 1984 have not been modified in some way to accommodate instruction on this legislation. Moreover, the legislation will continue to affect the curriculum of Center educational programs for some time. For that reason, the Chief Justice appointed a committee of judges, chaired by Judge A. David Mazzone of the District of Massachusetts, a member of the Center's Board, to help guide Center efforts to educate the third branch about the changes already in effect and to address the massive educational needs that guideline sentencing will create when it takes effect.

In-Court Training and Education Programs. For some years now, the Center has encouraged each court to designate at least one staff member as a training coordinator. In addition to their regularly assigned duties, training coordinators help structure and promote training programs for personnel within their courts. They also alert judges and supporting personnel to new Center media programs and take on special tasks, including helping to coordinate video seminars such as the January program on the crime legislation.

The Center began to develop the training coordinator approach in probation offices a decade ago and then expanded it to other court units. As of the summer of 1985, 288 federal court employees were serving as training coordinators: Two of the courts of appeals have 2 coordinators, and nine have 1; of the 275 serving in trial courts, 108 serve in probation or pretrial services offices and 167 in court executives' or clerks' offices (including 80 coordinators in the bankruptcy courts). Although coordinators in a few districts serve the entire court, most courts have appointed one in each major office.

Two workshops for new training coordinators were held in 1985. They emphasized adult-learning principles and training techniques and provided information on resources available from the Center and other organizations.

During this fiscal year, the Center conducted three circuitwide workshops for experienced training coordinators. These programs, in addition to providing advanced instruction on educational theory and training techniques, offered coordinators from within a circuit an opportunity to become better acquainted and to establish networks for exchanging training materials and experiences. The Center also publishes a newsletter, *What's Happening?*, to alert training coordinators to the availability of new materials and programs, and is preparing a training coordinator's manual to provide basic information on training techniques and available resources.

In fiscal 1985, the Center conducted or was associated through its training coordinator network with more than sixty in-court workshops on such topics as office management, supervisor–employee relationships, group dynamics, psychological testing, staff development, and word processing. The format for any particular program reflects the particular need it is designed to fill and the preferences of those serving as instructors. For some programs, an experienced official from another court may be brought in to conduct the training. For others, an expert in the subject area from the academic or

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professional community, or from the staff of the Center or the Administrative Office, may serve as the instructor. Often, local programs are built around a videotape or film from the Center's media library. Using suggestions and techniques contained in newsletters or presented in training coordinator training programs, coordinators also arrange programs that entail no Center staff assistance whatsoever.

Media Library. The Center's Information Services Office includes a library of audiotapes, videotapes, and films that cover a wide range of specialized topics and are used throughout the federal judicial system. Personnel can hear, and often view, presentations of specific interest to them at their convenience—in their own court and sometimes in their home. A large percentage of the library's holdings are recordings made at Center seminars and workshops. Some use the tapes because they have been unable to attend a seminar or workshop; others use them to review, in a more leisurely fashion, programs they have already attended in person. The complexity of many of the subjects treated has resulted in increased use of tapes for this purpose.

Additionally, and with increasing frequency, the Center is producing its own video programs to meet specific training needs. Some of these—for example, special programs for regional orientation seminars, programs on case management for judges, and presentations on alternative dispute resolution or trial advocacy—have been described elsewhere in this report.

Because of the continuing change in the Center's audiovisual programs and offerings, the Center undertook a thorough revision of its media catalog in 1985 to facilitate use of the collection. Publication of the new edition is expected early in the next fiscal year.

In fiscal 1985, with the proliferation of microcomputer technology in the courts, the Center began to acquire and to circulate instructional software packages on various topics. Such packages permit an employee to proceed through tutorials and exercises, using a computer, at his or her own rate. Some packages also contain videocassettes. Center experiments with this type of individual instruction represent another of its efforts to reduce reliance on travel-based instruction.

Supplementary Training. Tuition support to attend courses in job-related subjects at local educational institutions is also available to qualifying personnel. Where circumstances require it, the Center

occasionally permits attendance at a national institution as well. The program is limited to courses whose subject matter is not available through regular Center seminars. These might include offerings of one or more days' duration in specific office management skills, specialized topics in corrections and law enforcement, substantive legal issues, or advocacy skills. They could also include evening courses that run for a full semester. (Typically, when a course is specifically oriented to receipt of a degree or certificate, the student is expected to assume some of the costs; examples are the Institute for Court Management's Court Executive Development Program and the Master's Program for Probation Officers at Fordham University.)

Occasionally, Center tuition support is based on a commitment from the employee to later arrange a similar course for other employees in the jurisdiction. Two probation officers in a metropolitan court of the Eleventh Circuit with a heavy narcotics caseload, for example, attended a course on financial investigation. Subsequently, they arranged a workshop attended by sixty officers in the district, which treated such topics as cash generation and fraud schemes, evidence of illicit income, and manipulation of books and records.

For fiscal 1985, the Center anticipates providing tuition support to approximately 1,800 individuals, at an average expenditure per course of about $170. The funds will be used by various categories of personnel, as shown in the table that follows.

Tuition Support Program—Fiscal 1985

	Percentage of Funds
Offices of clerks of court	36
Bankruptcy judges and staff	19
U.S. probation officers and staff	23
Federal public defenders and staff	9
Secretaries	5
Circuit and district judges	1
U.S. magistrates	1
Staff attorneys	1
Others (librarians, district and circuit executives' offices, etc.)	5

NOTE. Not included in this list are the funds for assistant federal defenders' attendance at Mercer University's National Criminal Defense College, described in chapter 1 of this report, and probation officers' attendance at the Fordham program, described in chapter 2.

The Center's tuition support program has grown rapidly since its inception early in the Center's history, when both the demand and funding were very modest by today's standards. A detailed review of the tuition support program, its objectives, and its operation was presented to the Center's Board in October 1984. The Board reaffirmed its support for the concept of tuition support and the administration of the program, and considered the sums allocated to this program appropriate. However, the Board directed that this program not be allowed to expand appreciably as a proportion of the Center's total continuing education budget. This Board mandate has been reflected in the program's administration in fiscal 1985.

Automation Training. In fiscal 1985, the Center continued its effort to provide automation support to the circuit and district courts. The shift to decentralized systems has created the need for a training effort of substantial proportions, which is being undertaken jointly by the Innovations and Systems Development Division and the Continuing Education and Training Division. (Additional details on automation training are contained in chapter 1.)

The Center's programs for clerks have stressed automation topics, and as a further aid in assisting court staff to become more aware of computers, the Center has made several instructional videocassettes available for circulation through its media library. In fiscal 1985, the two divisions also began to experiment with producing instructional videotapes for local use by the courts.

The Center also provided limited support during fiscal 1985 for courts that have received personal-computing equipment from the Administrative Office for use by chief judges, clerks, and others. The Administrative Office takes responsibility for ensuring that operators are able to use such equipment. The Center's assistance is directed primarily at computer literacy and management of computer services. It has taken the form of instructional videotapes, workshops, and in special situations, vendor-supplied courses. Some instructional software packages on popular applications appear promising and are being added to the Center's audiovisual collection.

B. Assessing the System's Needs for New Judgeships

The Center, through its Research Division, continues to serve the Subcommittee on Judicial Statistics of the Judicial Conference Committee on Court Administration. The subcommittee is charged with providing the parent committee and, through it, the Judicial Conference of the United States, with recommendations concerning the need for new judgeships. These recommendations, if approved by the Conference, are forwarded to the Congress.

The Subcommittee on Judicial Statistics has for some time been using four hundred "weighted" filings per year as an appropriate benchmark; when filings rise above that level there is, presumptively, reason to consider whether an additional judgeship or judgeships are necessary. Even though the subcommittee considers all the factors involved with respect to each request for the creation of a new judgeship, the benchmark or touchstone is significant. Accordingly, the subcommittee asked the Center to explore the extent to which empirical data support the use of this figure by the subcommittee, as distinguished from a variety of alternatives. The resultant staff paper, entitled *The Caseload Experiences of the District Courts from 1972 to 1983: A Preliminary Analysis*, concluded that the four hundred cases per judge is optimal.

It is a truism that different types of cases impose vastly different burdens on the judges who must hear them. The number of raw filings alone does not distinguish between an action on a student loan that is in default and a complex title VII case. For this reason, the Subcommittee on Judicial Statistics has for some years been using case weights developed by the Center and designed to reflect these differences. As litigation patterns change, there is need to revalidate the weightings. How often such revalidation is necessary and how best to accomplish it without imposing unduly on the judiciary are matters of continuing concern to the subcommittee and to the Center's Research Division.

C. Information and Liaison Activities

The Center maintains contact with other organizations active in the field of judicial administration. The director of the Center is a statutory member of the Advisory Board of the U.S. Department of Justice's National Institute of Corrections. He is also a member of

the American Law Institute-American Bar Association Committee on Continuing Professional Education. The Center's deputy director serves as a liaison member to the Administrative Conference of the United States. The director of the Division of Inter-Judicial Affairs and Information Services is president-elect of the Institute of Judicial Administration, is a council member of the American Bar Association's Judicial Administration Division, and served for many years as the secretary-treasurer of the National Center for State Courts. In addition, the Center has frequent communication with such organizations as the Institute for Court Management, the National Judicial College, and the National Association of State Judicial Educators.

In fiscal 1985, the Center, along with forty other organizations, served as a cosponsor of the National Center for State Courts' September 1985 Court Delay Reduction Conference in Denver. Center support to attend the conference was available to a nominee of each circuit, who was requested to report as appropriate to others in the respective circuit.

The Third Branch. The Center and the Administrative Office jointly publish a monthly bulletin for the personnel of the federal judicial system. *The Third Branch* provides a medium for the distribution of pertinent information such as new legislation related to the work of the federal courts, actions of the Judicial Conference of the United States, and new-judgeship appointments.

In-depth interviews on subjects relevant to federal judicial administration are a regular feature of *The Third Branch*, as are announcements of new publications.

The Center assumes primary editorial and production responsibility for *The Third Branch*. Thirteen thousand copies are printed each month and distributed to all federal judges, supporting personnel, members of the Senate and House of Representatives, state chief justices, deans of law schools, members of the House of Delegates of the American Bar Association, and upon request, other interested individuals working in the field of judicial administration. An annual index to *The Third Branch* is also published.

Information Services. The Information Services Office (ISO) operates as a clearinghouse for information and materials on federal judicial administration. In addition, it supports Center programs by providing library services, including an extensive interlibrary loan program. The ISO also maintains a small, specialized library,

audiovisual media, and an extensive vertical file containing material of interest to federal judicial personnel.

Using a variety of automated information retrieval systems, members of the ISO staff are able to conduct comprehensive literature searches in law-related fields, as well as computer-assisted legal research by use of WESTLAW and LEXIS. The ISO's participation in the Online Computer Library Center (OCLC), an international network through which libraries expedite cataloging and interlibrary loans, facilitates service to Center staff.

The Information Services Index System (ISIS), developed in-house through a computer program designed by the Innovations and Systems Development Division, applies modern principles of data base management to access the Center's large collection of research reports, conference papers, and unpublished addresses related to the work of the federal courts. This body of "fugitive" information, much of which is unavailable elsewhere, is indexed on ISIS and used as a resource in responding to the many requests received from federal judges and their supporting personnel, the legislative and executive branches of government, judicial administration organizations, and members of the academic and legal communities.

The ISO also serves as a central collection point for the local rules of all federal courts, trial and appellate. With the aid of a computerized index, the office is able to respond to what would otherwise be complex inquiries concerning the existence of local rules on specified subjects and variations among courts in common areas. Courts working on revisions of their rules have used this reference service frequently during the past year.

During fiscal 1985, the ISO assumed responsibility for operation of the Center's media library, previously located in the Division of Continuing Education and Training. Through the media library's circulation service, a wide variety of audiotapes, videotapes, and films are made available for loan to personnel throughout the federal court system. Incorporating audiovisual materials into the mainstream of ISO operations is expected to increase the flow of useful information to the field. This service was of significant assistance to the federal judiciary in early 1985, when more than four hundred requests were filled for Center-produced audio and video programs on the Comprehensive Crime Control Act of 1984 and the Bankruptcy Amendments and Federal Judgeship Act of 1984.

The ISO has primary responsibility within the Center for disseminating the Center's published reports. During fiscal 1985, more than 19,000 publications were distributed in response to requests from judges, government agencies, students, and others interested in federal judicial administration.

Working with a committee appointed by the Chief Justice and chaired by Judge Gerhard A. Gesell of the District Court for the District of Columbia, the office has prepared a brief paper entitled "Bibliographic Resources Available to Federal Judges." It is sent to all newly appointed federal judges and is available, upon request, from the Information Services Office.

Library of Congress Liaison. The Center continued during the past fiscal year to benefit from established ties with the American-British Law Division of the Law Library of the Library of Congress. Experience has shown that although major assistance is afforded the judiciary through their regional libraries, there are some areas, such as legislative histories, in which specialized research is not readily available; and the Library of Congress is a rich source of assistance in this area. Under existing arrangements, federal judges can obtain timely responses to research questions, including printed supportive material, from the library. Requests, which the Library of Congress staff welcome, may be made directly to the library or through the Center.

Oral History in Aid of Judicial Administration. At the direction of the Board of the Center, an oral history project was designed and implemented to record the ideas and experiences of federal judges on such matters as case management, efficient utilization of jurors, and the responsibilities of chief judges. Compilation of the oral histories continued in fiscal 1985.

Foreign Visitor Service. Representatives of more than thirty-five foreign countries visited the Center during the past year. These visitors were primarily judges, other government officers, and academicians referred by the State Department and the United States Information Agency, among others, to learn about the federal judicial system. Among the visitors were four judges and four court administrators from the People's Republic of China, who received an extensive briefing on judicial education.

There has been considerable interest in the Center's *Bench Book for United States District Court Judges* in a dozen or more Asian countries interested in developing a similar reference work for

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their respective courts. The Center has responded to these requests, forwarding copies through the Asia Foundation and receiving, in turn, comments and reactions from the recipient courts.

During the past year the Center provided staff support for the 1984 Anglo-American Legal Exchange, which focused upon administrative law. These legal exchanges, held approximately every four years, are designed to discover what features of the administration of justice in each of the two nations might be adopted or adapted for use in the other. This goal is accomplished primarily through visits to England and to this country by small teams of eminent American jurists and lawyers and their English counterparts. The 1984 American team was headed by Chief Justice Warren E. Burger. Justice Sandra Day O'Connor, Chief Judge Howard T. Markey, and Judge Antonin Scalia were also team members. The British team was headed by the Right Honorable Lord Bridge of Harwich.

During the two weeks the British team spent in the United States, they attended educational sessions at the Federal Judicial Center and viewed administrative hearings, proceedings, or appeals before the Federal Trade Commission, the Federal Communications Commission, the Social Security Administration, and the U.S. Court of Appeals for the District of Columbia Circuit. In addition, they attended a session of the Judicial Conference of the United States, met with the Chief Justice on several occasions, and also met with the attorney general, several administrative law judges, agency general counsels, and members of the American Bar Association's Administrative Law Section.

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V. THE ORGANIZATION OF THE CENTER AND ITS FOUR DIVISIONS

A. The Board of the Center

The Federal Judicial Center was established by the Congress in 1967 "to further the development and adoption of improved judicial administration in the courts of the United States" (28 U.S.C. § 620(a)). That statute also provides that the Center shall be "within the judicial branch of the Government" and that its activities shall be supervised by a Board, chaired by the Chief Justice. The Board also includes the director of the Administrative Office as a permanent member and six judges—two from the courts of appeals, three from the district courts, and one from the bankruptcy courts—elected for nonrenewable four-year terms by the Judicial Conference of the United States. By statute, the Board selects the director of the Center.

The Center welcomed three new members to its Board in fiscal 1985. Bankruptcy Judge Martin V. B. Bostetter, Jr., of the Eastern District of Virginia was elected to Board membership in October 1984 to complete the term of the late Judge John J. Galgay. Judge Arlin M. Adams of the Court of Appeals for the Third Circuit was elected to the Board by the Judicial Conference at its March 1985 meeting. Judge Adams assumed the seat formerly held by Judge Cornelia G. Kennedy of the Court of Appeals for the Sixth Circuit, whose term had expired. On July 15, 1985, L. Ralph Mecham took office as director of the Administrative Office of the United States Courts, replacing William E. Foley, who had retired earlier in the year. By operation of statute, Mr. Mecham became a member of the Center's Board.

The budget for the Federal Judicial Center in fiscal 1985 was $9,571,000, and the Center had ninety-four authorized personnel positions. For most of its history, the Center has carried out its mission through four divisions; a brief description of the work of each of the divisions is provided in the sections that follow.

B. Division of Continuing Education and Training

The Division of Continuing Education and Training is the largest of the Center's four divisions in budget authority and second largest in personnel. There are today more than 16,600 individuals in the federal judicial system, and the Center has the responsibility of providing educational opportunities for virtually all of them. Understandably, a wide variety of educational services are employed in the discharge of this mission. In-court, local, and regional programs make it possible to offer more educational services each year to the third branch and represent a diversity of techniques and approaches not possible when the Center relied solely on seminars and workshops of a national or regional nature. The Center's best-known educational programs, however, continue to be formal seminars and workshops, usually organized on a national or circuitwide basis. By appointment of the Chief Justice, Senior Judge William J. Campbell of the Northern District of Illinois serves as "senior chairman emeritus" of the the Center's seminar programs.

The table that follows classifies the training programs offered by the Center in fiscal 1985. The table does not include courses that are offered by other educational institutions and that federal judicial system personnel attend with Center funding. Those are included in a separate table that appears in chapter 4; that program is administered by the special education branch of the division, and the courses typically involve minimal tuition, often with no provision of funds for travel or subsistence.

The Division of Continuing Education and Training uses a simple four-phase planning cycle to develop, implement, and assess its programs. Needs are identified through the work of planning committees or groups composed of representatives of the personnel categories to be served and of the Administrative Office, through suggestions from the field, and through staff review of data that the courts provide regularly to the Center and the Administrative Office. The division then, in consultation with the planning groups and others, prepares programs to meet those needs.

The division uses a variety of evaluation devices to measure the success of its various programs. Questionnaires administered during or immediately after a program are standard. In addition, however, for certain personnel categories, supervisors are contacted to learn whether there have been any observable changes in em-

Seminars and Workshops
(Projected Through September 30, 1985)

No.	*Category*	*Participants*	*Faculty*	*Total*
17	Circuit/district judges	581	134	715
7	Bankruptcy judges	243	41	284
6	Magistrates	235	47	282
12	Clerks of court & clerk's office personnel (circuit, district, and bankruptcy)	512	83	595
40	Probation officers	1,003	159	1,162
4	Federal public defenders, community defenders, & investigators	175	51	226
4	Training coordinators	104	20	124
1	Senior staff attorneys	11	1	12
17	Automation seminars & workshops	192	71	263
5	Programs for personnel in several categories	123	23	146
113	TOTALS	3,179	630	3,809

In-Court Training Programs

45	Personnel of clerks' and probation offices	1,130	78	1,208
158	GRAND TOTALS	4,309	708	5,017

ployees' performance. Follow-up questionnaires are also distributed some months after the program in an effort to measure change in performance or knowledge over time and to gauge the impact of the program. For example, a fiscal 1985 follow-up evaluation of all participants in the Center's civil case management workshops attests to the value of the programs, but also suggests likely benefit to be derived from some modification of the program, changes that are currently under staff review.

C. Division of Innovations and Systems Development

When the Congress established the Center a short eighteen years ago, it provided that the newly created organization "study and determine ways in which automatic data processing and systems procedures may be applied to the administration of the courts of the United States" (28 U.S.C. § 623(a)(5)). Pursuant to that mandate,

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the Division of Innovations and Systems Development has assumed the large responsibility of translating new developments in computer and related technologies into complete systems for replacing paper dockets and manual reporting procedures, systems that will ultimately benefit all levels of the federal court system. In the last generation of automation development, Center staff relied on the then-available state-of-the-art mainframe computer technology to produce the Courtran system, of which the most advanced product, Courtran Criminal, was an electronic docket sheet and reporting system for the felony criminal caseload of the larger district courts. Now managed by the Administrative Office of the United States Courts and operating in fifteen metropolitan district courts, Courtran Criminal is used to process more than half of the federal system's felony cases.

During the early 1980s, rapid and pronounced changes in the power and architecture of automated data-processing equipment and programs offered the Center an opportunity to modernize the courts' automation complement. Guided by expert advice from advisers both within and outside the government, the Center arrived at several key strategic decisions, which have been shared by the Administrative Office and approved both by the Center's Board and by the Judicial Conference of the United States.

One major change has been in the location of computing machinery: from a few centralized mainframe computers in prior years to many computers placed in the courts themselves today. Problems normally associated with extensive distribution of computing power have been resolved through the selection of a standardized set of operations software programs. In addition, the Center provides training in the use and basic operation of the larger microcomputers located in the courts. It works closely with the Administrative Office in developing its automation plans. The goal is to capture the benefits of diversity without suffering the costs of runaway disparity.

D. Research Division

The Center is mandated by statute to "conduct research and study of the operation of the courts of the United States" (28 U.S.C. § 620(b)(1)). In fulfilling that mandate, the Research Division undertakes a large variety of projects in response to requests from several sources. Judicial Conference committees frequently ask for

assistance in evaluating policy alternatives. In addition, the division is called upon to undertake short-term investigations for individual courts and circuits, as well as for the Administrative Office. Of course, projects are also generated by the division itself, often as a result of the findings of earlier investigations. Whenever a research effort requires commitment of substantial resources, whether in staff time or in the expenditure of funds, the proposal requires Center Board approval.

The work of the Research Division often concerns subjects of legislative interest—for example, proposals restructuring judges' sentencing discretion, expansion of the number of district court executives, amendment of the Speedy Trial Act, and authorization on a permanent basis of court-annexed arbitration.

The results of Center research are disseminated through several methods: reports and staff papers, presentations at training programs, and presentation of conference papers by staff members.

E. Division of Inter-Judicial Affairs and Information Services

The Inter-Judicial Affairs and Information Services Division has primary responsibility for liaison and coordination with other court-related organizations. In addition, the division has principal responsibility for briefing representatives of foreign countries concerning the federal judicial system in general and the work of the Center in particular.

The Center's Information Services Office is located within the division and, in addition to supporting the work of Center staff, responds to special requests from federal judges and supporting personnel. A unique clearinghouse of published and unpublished information on the federal judicial system, Information Services uses a variety of automated data bases and specialized indexes relevant to judicial administration in the federal system. The Information Services Index System (ISIS) enables staff to retrieve individual items of interest from an extensive collection of "fugitive" material—unpublished work or occasional papers and addresses that may be published but are otherwise inadequately indexed. Subject to limits on resources, materials not available elsewhere are made available to the academic community, other researchers, and the general public.

The Inter-Judicial Affairs Division is also responsible for a number of major, continuing publications, including *The Third Branch*, the *Bench Book for United States District Court Judges*, *Bench Comments*, and *Chambers to Chambers*, all described elsewhere in this report.

VI. CENTER PUBLICATIONS

The Center divides its publications into a number of different categories. The Education and Training Series offers in written form presentations made at Center seminars and conferences. Manuals and handbooks are produced as reference materials for particular groups within the federal judicial system, but they are also made available, where appropriate, to a wider audience. The findings and supporting data developed in the course of major research projects are published in reports. Staff papers describe short-term research efforts undertaken in response to specific inquiries. In addition, work of Center staff that appears in professional publications is sometimes reproduced as a staff paper.

A *Catalog of Publications* is prepared annually for distribution with the annual report. Although they are not listed in the catalog, the Innovations and Systems Development Division also publishes manuals, user guides, and training documents for the automated systems it develops. Publications listed in the catalog can be obtained by writing to the Center's Information Services Office; inclusion of a self-addressed, gummed mailing label, franked where appropriate, is suggested. If time is of the essence, publications can be ordered by calling the office at (202) 633-6365 (also FTS). Although the Center, in conformance with its statutory mandate, makes most of its publications available to a wide and varied audience, some are produced in limited quantities for specific audiences. For this reason and because some are out of print, such publications are available only on a loan basis. Others, such as the *Bench Book*, are as a matter of Board policy available for distribution only to specified categories of judicial system personnel, such as judges and magistrates.

Most of the publications completed or to be completed in 1985 are listed below; a few others mentioned in this report will not be available for distribution until early in fiscal 1986.

Research Reports and Staff Papers

Administration of Justice in a Large Appellate Court: The Ninth Circuit Innovations Project, by Joe S. Cecil

Asbestos Case Management: Pretrial and Trial Procedures, by Thomas E. Willging

Attorney Fee Petitions: Suggestions for Administration and Management, by Thomas E. Willging and Nancy A. Weeks

The Caseload Experiences of the District Courts from 1972 to 1983: A Preliminary Analysis, by Barbara Stone Meierhoefer and Eric V. Armen

"Containing the Cost of Litigation," by A. Leo Levin and Denise D. Colliers (in 37 *Rutgers Law Review* 219 (1985))

Deciding Cases Without Argument: A Description of Procedures in the Courts of Appeals, by Joe Cecil and Donna Stienstra

An Empirical Study of Rule 11 Sanctions, by Saul M. Kassin

The First Decade of the Circuit Court Executive: An Evaluation, by John W. Macy, Jr.

Observation and Study in the Federal District Courts, by Julie Horney

The Roles of Magistrates: Nine Case Studies, by Carroll Seron

Unpublished Dispositions: Problems of Access and Use in the Courts of Appeals, by Donna Stienstra

Visiting Judges in Federal District Courts, by Donna Stienstra

Education and Training Series

Catalog of Audiovisual Media Programs (1985 revision)

The Crime Control and Fine Enforcement Acts of 1984: A Synopsis, by Anthony Partridge

Disability Appeals in Social Security Programs, by Lance Liebman

Major Issues in the Federal Law of Employment Discrimination: Supplement 1 and Table of Authorities, by George Rutherglen

The Sentencing Options of Federal District Judges, by Anthony Partridge (1985 revision)

Manuals

Handbook for Federal Judges' Secretaries (1985 revision)

Manual on Employment Discrimination Law and Civil Rights Actions in the Federal Courts, by Charles R. Richey (1984 revision)

Manual on Recurring Problems in Criminal Trials, by Donald S. Voorhees (1985 revision)

Preparing a United States Court for Automation, by Gordon Bermant

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Public Law 90-219
90th Congress, H. R. 6111
December 20, 1967

An Act

To provide for the establishment of a Federal Judicial Center, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—FEDERAL JUDICIAL CENTER

SEC. 101. Title 28, United States Code, is amended by inserting, immediately following chapter 41, a new chapter as follows:

"Chapter 42—FEDERAL JUDICIAL CENTER

"§ 620. Federal Judicial Center

"(a) There is established within the judicial branch of the Government a Federal Judicial Center, whose purpose it shall be to further the development and adoption of improved judicial administration in the courts of the United States.

"(b) The Center shall have the following functions:

"(1) to conduct research and study of the operation of the courts of the United States, and to stimulate and coordinate such research and study on the part of other public and private persons and agencies;

"(2) to develop and present for consideration by the Judicial Conference of the United States recommendations for improvement of the administration and management of the courts of the United States;

"(3) to stimulate, create, develop, and conduct programs of continuing education and training for personnel of the judicial branch of the Government, including, but not limited to, judges, referees, clerks of court, probation officers, and United States commissioners; and

"(4) insofar as may be consistent with the performance of the other functions set forth in this section, to provide staff, research, and planning assistance to the Judicial Conference of the United States and its committees.

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